

**BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COLUMBIA, SOUTH CAROLINA**

#19-11784

JUNE 26, 2019

10:07 A.M.

ND-2019-15-E:

JOHNSON DEVELOPMENT ASSOCIATES, INC. – *Request for an Allowable Ex Parte Briefing to Discuss Johnson Development Associates and House Bill 3659*

**ALLOWABLE EX PARTE
BRIEFING**

COMMISSION MEMBERS PRESENT: Comer H. ‘Randy’ RANDALL, *Chairman*; Justin T. WILLIAMS, *Vice Chairman*; and COMMISSIONERS John E. ‘Butch’ HOWARD, Florence P. BELSER, Thomas J. ‘Tom’ ERVIN, Swain E. WHITFIELD, and G. O’Neal HAMILTON

ADVISOR TO COMMISSION: Joseph Melchers
GENERAL COUNSEL

STAFF: Jocelyn Boyd, Chief Clerk/Executive Director; B. Randall Dong, Esq., Josh Minges, Esq., and Jerisha Dukes, Esq., Legal Advisory Staff; Douglas K. Pratt, John Powers, and William O. Richardson, Technical Advisory Staff; Randy Erskine, Information Technology Staff; Melissa Purvis, Livestream Technician; Jo Elizabeth M. Wheat, CVR-CM/M-GNSC, Court Reporter; and Hope Adams, Hearing Room Assistant

APPEARANCES:

JAMES H. GOLDIN, ESQUIRE, together with **MARK WESSON** [*President, Natural Resources Division / Johnson Development Associates*], representing and presenting for **JOHNSON DEVELOPMENT ASSOCIATES, INC.**

ANDREW M. BATEMAN, ESQUIRE, Designee of the Executive Director of THE SOUTH CAROLINA OFFICE OF REGULATORY STAFF

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

101 EXECUTIVE CENTER DRIVE
COLUMBIA, SC 29210

WWW.PSC.SC.GOV

POST OFFICE BOX 11649
COLUMBIA, SC 29211

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Note: For identification of any additional referenced materials and/or links for same, please see correspondence to be filed by the Office of Regulatory Staff Designee

Please note the following inclusions/attachments to the record:

- Presentation Slides
- Letter to South Carolina Senate Judiciary Committee (referenced in presentation)

P R O C E E D I N G S

CHAIRMAN RANDALL: Please be seated, everybody. Good morning, everyone, and welcome to today's allowable ex parte. I'm going to ask Mr. Melchers to read the docket.

MR. MELCHERS: Thank you, Mr. Chairman.

Commissioners, we're here pursuant to a Notice of Request for Allowable Ex Parte Briefing, scheduled for today, June 26th, here in the Commission hearing room. The person or party requesting the briefing is James H. Goldin, representing Johnson Development Associates, Inc., and the subject matter to be discussed today at the briefing is: Johnson Development Associates and H. 3659.

Thank you, Mr. Chairman.

CHAIRMAN RANDALL: Thank you.

Mr. Bateman, I think you have some words for us about rules?

MR. BATEMAN: Good morning, Mr. Chairman, members of the Commission. My name is Andrew Bateman and I'm counsel for the Office of Regulatory Staff, and I'm here as the designee for the Executive Director of the Office of Regulatory Staff for this allowable ex parte.

1 As the ORS representative, it is my duty to
2 certify the record of this proceeding to the Chief
3 Clerk of the PSC within 72 hours that this briefing
4 was conducted in compliance with the provisions of
5 South Carolina Code Annotated Section 58-3-260(C).
6 That statute sets forth certain parameters and
7 rules under which this briefing must take place,
8 and if you'll indulge me, I'd like to go over a few
9 of those.

10 The requirements of that statute are, in part,
11 that the allowable ex parte be confined to the
12 subject matter which was noticed. In this case,
13 the issue noticed was: Johnson Development
14 Associates and H. 3659. I, therefore, ask that
15 everyone here please refrain from discussing any
16 matters not related to that subject matter.

17 Second, the statute prohibits any
18 participants, Commissioners, or Commission Staff
19 from requesting or giving any commitment,
20 predetermination, or prediction regarding any
21 action by any Commissioner as to any ultimate or
22 penultimate issue which either is or is likely to
23 come before this Commission.

24 Third, I'd ask that the participants,
25 Commissioners, and Staff refrain from referencing

1 any articles, reports, statutes, or documents of
2 any kind that are not included in today's
3 presentation, to prevent the need for myself or the
4 company's lawyers from having to try to track down
5 copies or links to these documents to include in
6 the record. As none of the information contained
7 in the presentation appears to have been marked or
8 requested to be granted confidentiality, I'd ask
9 that the presenters refrain from referencing or
10 discussing any materials over which they would like
11 to maintain confidentiality, and I would ask that
12 the Commissioners please be understanding if the
13 presenters decline to provide such information to
14 any Commission questions here today.

15 Finally, if I've counted my days correctly,
16 material corresponding to today's proceeding will
17 be posted on the Commission's website by the end of
18 the day next Tuesday. Any document referenced or
19 utilized today should be included in that posting.

20 As a final note, please make sure to read,
21 sign, and return the form which you were given at
22 the door when you came in today. Please read the
23 form. This form needs to be signed by each
24 attendee to certify the requirements contained in
25 South Carolina Code Annotated Section 58-3-260(C)

1 have been complied with at the presentation here
2 today.

3 This concludes my preliminary matters. Thank
4 you, Mr. Chairman.

5 **CHAIRMAN RANDALL:** Thank you, sir.

6 Mr. Goldin and Mr. Wesson, thank you; we're
7 glad you're here. Welcome, and we will turn it
8 over to you.

9 **MR. JAMEY GOLDIN:** Mr. Chairman, I appreciate
10 y'all gathering this morning. I know you didn't
11 have to come in, and I certainly am mindful of
12 that. I'm Jamey Goldin. I'm an attorney here in
13 Columbia, with the law firm of Nelson Mullins Riley
14 & Scarborough. It's certainly good to always be
15 before you again.

16 Before we formally get started, I do want to
17 thank Jocelyn Boyd, Joseph Melchers, Ms. Wheat,
18 other Commission Staff, and Andrew and the Office
19 of Regulatory Staff, because it is a burden on
20 everyone and more work for everyone, but it does
21 serve an important purpose.

22 Today I'm here on behalf of Johnson
23 Development Associates, out of Spartanburg. I have
24 accompanying me today Mark Wesson, who is the
25 President of the Natural Resources Division for

1 Johnson Development Associates. We're here to
2 introduce you to Johnson Development. Some of you
3 may be familiar with it, but we want to go into
4 some of the divisions and what it is that we do.
5 We look forward to sharing with you a history of
6 the company, a history of the founder of the
7 company, and what it is that the company does.
8 Furthermore, we want to discuss a little bit about
9 what we see as the potential under H. 3659 and
10 South Carolina's energy future under the Act.

11 Again, I'll reference H. 3659. We also know
12 it as Act 62 (2019) now. No confusion, but they're
13 interchangeable.

14 We are here to give our interpretations and
15 opinions on the Act. We were intimately involved
16 in the drafting of the Act. Johnson has been
17 working with various stakeholders for the last
18 couple of years, and the ORS – as you have
19 previously heard in an ex parte – did an excellent
20 job over the last, now, 14 months, getting the
21 stakeholder process together. We feel that Act 62
22 is a product of that.

23 And I know that my friends at the Solar
24 Business Alliance gave a very thorough and
25 technical ex parte – allowable ex parte – to you

1 all. Somebody had to plow that ground. We just
2 hope to provide a little color, a little background
3 maybe on the players involved, the supporters, the
4 advocates of it, and then I'll highlight a few key
5 provisions and take questions from you all, if you
6 have any.

7 And without anything further, I'd like to turn
8 it over to Mr. Wesson to give a little overview of
9 Johnson Development.

10 **MR. MARK WESSON:** Thank you, Jamey.

11 [Reference: Presentation Slide 2]

12 Thank you all for coming this morning and
13 having us. We appreciate the opportunity to tell
14 you a little bit about Johnson Development and its
15 history, and our perspective on the Energy Freedom
16 Act.

17 The Johnson Group is a family-owned group of
18 companies based in Spartanburg, South Carolina,
19 founded by George Dean Johnson, Jr. The Johnson
20 Group consists of Johnson Development Associates,
21 which sometimes I may refer to as JDA; OT0
22 Development; and American Credit Acceptance.
23 Together, we have just under 3500 employees with
24 about 1000 of them located in South Carolina.

25 On the left side of the screen is Johnson

1 Development Associates. JDA specializes in
2 commercial real estate development. Next is OTD
3 Development, where we develop, own, and manage
4 select service hotels. And thirdly is American
5 Credit Acceptance, which is an automobile finance
6 company working with the nation's top-tier auto
7 retailers, like CarMax and AutoNation.

8 Next slide.

9 [Reference: Presentation Slide 3]

10 Here's a little timeline of the Johnson Group.
11 The history of the Johnson Group dates back to
12 1985, when George started franchising Blockbuster
13 video stores in the Carolinas. By 1993, he'd
14 developed several hundred stores from Texas to
15 Virginia. In 1986, George started Johnson
16 Development Associates, and it was mainly focused
17 on developing grocery-store-anchored retail centers
18 in Spartanburg County. I'll talk more in depth on
19 JDA on the following slides.

20 In 1994, George started Extended Stay America
21 and took it public the following year. After
22 developing 475 hotels, Extended Stay America was
23 sold to the Blackstone Group in 2004. In 1997,
24 George cofounded Advance America, and grew the
25 company from a few stores in the Southeast to one

1 of the nation's largest consumer lending companies,
2 ultimately taking that company public in 2004.

3 Also, in 2004, George founded OTD Development
4 to develop and manage select service hotels. It
5 has developed over 70 properties under the
6 Marriott, Hilton, and Hyatt brands. The Johnson
7 Group currently owns 21 hotels and manages another
8 40 in places like Washington, DC, New York, Los
9 Angeles, San Francisco, Charleston, Chapel Hill.

10 In 2007, George founded American Credit
11 Acceptance to provide financing to the customers of
12 the nation's top automotive dealers.

13 [Reference: Presentation Slide 4]

14 So this is a little bit about Johnson
15 Development, itself. We do business in 17 states.
16 As I mentioned, it was founded in 1986, focusing on
17 grocery store development in Spartanburg County.
18 Over time, we began developing industrial buildings
19 and apartments in the Spartanburg area.

20 Today, we develop industrial distribution
21 facilities, apartments, and self-storage facilities
22 across the US. In addition to those activities,
23 through our Natural Resources Division, we develop
24 utility-scale solar farms in South Carolina.

25 [Reference: Presentation Slide 5]

1 Here are some examples of what JDA develops
2 today. On the top left is a distribution facility
3 we built for Amazon. JDA has built four facilities
4 for Amazon with some of them being over 1 million
5 square feet. In addition to Amazon, we've built
6 facilities for names like Walmart, Rite Aid, and
7 FedEx, in South Carolina, Texas, Alabama, Virginia,
8 and Florida.

9 On the top right is an example of one of our
10 self-storage facilities. Our projects are third-
11 party managed by CubeSmart, Extra Space, and Life
12 Storage, and tend to look more like office
13 buildings than storage facilities. We've completed
14 projects in South Carolina, North Carolina,
15 Virginia, Florida, Washington, DC, California,
16 Washington State, and New York.

17 In the lower left corner is an example of an
18 apartment building we recently built in Seattle,
19 Washington. We've built apartments in several
20 states, including South Carolina, Virginia,
21 Maryland, Florida, and California.

22 In the lower right corner is our Natural
23 Resources Division. The Johnson family owns
24 several thousand acres of timberland in South
25 Carolina, and we manage it as pine forest, selling

pulpwood, to be made into paper and tissue products, and saw timber for lumber. The timber holdings were the genesis of the solar development, as utility-scale solar farms can require significant acreage. Some of our timberlands have utility infrastructure – meaning powerlines – on them, and that makes them prime locations for large solar farms.

Next slide, please.

[Reference: Presentation Slide 6]

So here's a look at JDA's pipeline. We have over 730 megawatts of projects in the queues of Duke, Dominion, and Santee Cooper. Our pipeline breaks down with 323 megawatts in Duke territory, and that's all in DEC. We have 89 megawatts in Dominion, and 325 megawatts in Santee Cooper.

Our products range in size from two megawatts, which take up about 15 acres, to 75 megawatts, and those can be up to 600 acres in size. Our pipeline represents an aggregate project investment of more than \$950 million. To give a sense of scale, a single 75-megawatt project can cost upwards of \$80 million to construct. We have seven 75-megawatt projects in our pipeline. These projects will provide energy for 40-plus years.

[Reference: Presentation Slide 7]

Utility-scale solar development tends to happen in rural areas, as it requires large tracts of land. An ancillary benefit of solar farm development is the increase in property tax revenue the host county receives. These large tracts of land are typically being used for agricultural purposes and, therefore, pay property taxes at the very low ag-use rates available to them. When a solar farm is developed on this property, the resulting increase in property taxes can easily be 100 times larger than the revenue the ag-use rates produced. As an added benefit, unlike most other types of development, a solar farm does not require new schools, roads, water/sewer, or public safety services.

Now, I'd like to turn it back to Jamey to discuss our perspective on what we believe are some of the more important parts of the Energy Freedom Act.

[Reference: Presentation Slide 8]

MR. JAMEY GOLDIN: Members of the Commission, I have the pleasure not only of representing JDA today but also giving a presentation on parts of the Energy Freedom Act.

[Reference: Presentation Slide 9]

As you know, H. 3659 represents a monumental shift in our State's energy policy. There were 50 members of the House that cosponsored this bill. The leaders on energy policy were all sponsors. If you'll notice, we've highlighted that all three House PURC members were cosponsors. We've also noted the committee chairs that were also cosponsors of the bill. You will see that House leadership – and for that matter, Senate leadership – wanted this, and wanted it to be enacted properly. And we'll get to the vote tallies in a second.

[Reference: Presentation Slide 10]

But I think it's important to talk about that the business community really rallied around and drove this legislation, for the first time. As you can see here, and this is an example of the Senate letter that was sent by about – 35?

MR. MARK WESSON: I think that's right.

MR. JAMEY GOLDIN: – 35-36 of South Carolina's most prominent businesses and business leaders to the South Carolina Senate, to Senator Rankin's Judiciary Committee. And on this letter, they – you can see the logos. They want solar in the

1 generation mix, but more importantly their
2 customers demand it. They are now getting
3 questions about product made here, what the gen-mix
4 is, from their end-user consumer.

5 We, as a state, do an excellent job of
6 economic development, and we pride ourselves on
7 South-Carolina-made products. We do a great job of
8 touting that we are open for business. We must
9 increase the renewables in the gen-mix, in my
10 opinion, for us to be competitive and remain
11 competitive, from a business development
12 standpoint.

13 [Reference: Presentation Slide 11]

14 I alluded to it earlier, but there was not a
15 single dissenting vote recorded on this Act. It
16 came over unanimously. And y'all know as well as I
17 do, working with the Legislature, how hard it is to
18 get a hundred and – it looked like a few House
19 members were not present, or excused, but I mean,
20 look at that, defined without a single dissenting
21 vote. That's just unheard of. So I think it
22 really goes forward with kind of the mandate that's
23 been sent over.

24 [Reference: Presentation Slide 12]

25 I'm going to highlight a few key passages, and

1 I want to let you know that it is my opinion that
2 the most powerful section of this entire Act comes
3 in 58-41-20(F). It is a new day in South Carolina,
4 not to borrow on a phrase or steal a phrase from
5 our former governor, but it is a new day in South
6 Carolina and it is now explicitly the State's
7 policy of encouraging renewable energy.

8 I believe that this is the most important
9 piece of consumer energy legislation since 2004
10 with Act 175, when the Commission and ORS were
11 bifurcated. Simply put, the old way of doing
12 things, in my opinion, are no more.

13 [Reference: Presentation Slide 13]

14 Here is the legal citation and text for
15 Section 58-41-20(A) and the legal citation to the
16 Docket No. 2019-176-E.

17 [Reference: Presentation Slide 14]

18 I think this piece is particularly important,
19 and I believe the Solar Business Alliance touched
20 on it, but I would like to go into it a little bit
21 further, because for the first time that I can
22 remember – and I've been involved with most of you
23 all for the last decade on energy law and policy in
24 this State – this is the first time the Legislature
25 has ever given you fully funded tools to retain a

1 third-party expert, to verify what data is coming
2 in from the utilities.

3 The Legislature wants you to fully vet that,
4 and they want to make sure that the information
5 that is given to you, to parties under proper
6 confidentiality agreements, is accurate and
7 truthful. This is a huge win for consumers and for
8 independent power producers.

9 The language reads that: The Commission shall
10 engage, for each utility, a qualified independent
11 third party to submit a report that includes the
12 third party's independently derived conclusions as
13 to that third party's opinion of each utility's
14 calculation of avoided costs for purposes of
15 proceedings conducted to this section.

16 Furthermore, and I don't have it on the slide,
17 but that section goes on to read that they must –
18 that expert – must submit a statement in its report
19 assessing the level of cooperation received from
20 the utility during development of the report and
21 whether there were any material information
22 requests that were not adequately fulfilled by
23 electrical utility – by the electrical utility.
24 The electrical utilities can no longer withhold
25 information from the Commission without facing

1 scrutiny.

2 [Reference: Presentation Slide 15]

3 The single biggest issue, in JDA's opinion,
4 facing independent power producers, which stifles
5 development of renewable energy in South Carolina,
6 is unreasonable terms of power purchase agreements.
7 This Act requires that the terms and conditions for
8 the PPAs be commercially reasonable. I will defer
9 to Mark to elaborate on commercially reasonable
10 terms.

11 **MR. MARK WESSON:** Thank you.

12 [Reference: Presentation Slide 16]

13 Here's what we believe is meant by the phrase
14 "commercially reasonable terms." Commercially
15 reasonable terms are obtained through good-faith
16 efforts by willing participants to achieve a common
17 business purpose. Commercially reasonable terms
18 should not include any material, financial, or
19 other concession as a prerequisite.

20 The key components are: The process involves
21 willing participants attempting to achieve a common
22 business purpose; they result from a collaborative
23 effort. Also as important as what comprise
24 "commercially reasonable terms" is what they do not
25 include, such as material, financial, or other

1 concessions as a prerequisite. There are many
2 aspects of a PPA that fall into the category of
3 “terms and conditions.” We believe one of the most
4 important is the contract length.

5 [Reference: Presentation Slide 17]

6 I’ll close with some comments on the
7 importance of the PPA contract length.

8 The length of a PPA tends to have a direct
9 correlation to the length of time over which
10 lenders offer to finance solar projects. Loan
11 underwriting, in general, looks to identify how the
12 full amount of the loan will be paid back. In the
13 case of a solar farm, that is the PPA: the right to
14 receive payment for the production of energy for a
15 specified period of time. Lenders want to have
16 visibility as to how the full loan will be repaid
17 and, therefore, tend to underwrite loans to avoid
18 unpaid balances at the end of the loan. Lenders,
19 therefore, look to the length of the PPA when
20 establishing the duration of the loan they will
21 offer.

22 The next slide is an example of how
23 significant the duration of a loan is to the size
24 of the payment required to fully pay off that loan
25 during its term.

[Reference: Presentation Slide 18]

So we tried to come up with something that would be familiar to most people. This example uses a traditional residential mortgage of 30 years with a 4 percent rate. For each \$100,000 borrowed, it would take annual payments of about \$5700 to pay off the loan. If, however, the loan were required to be paid in 10 years, the payments would be twice as much. If the loan was required to be paid off in five years, the payments would be four times as much.

The point of this example is to illustrate how significant loan duration – and by association PPA contract length – is to the viability of project financing.

[Reference: Presentation Slide 19]

This linkage between the PPA length and the viability of available financing, we believe, is why the Legislature explicitly directed the PSC to consider the benefits of terms with a longer duration to promote the State's policy of encouraging renewable energy.

That concludes our prepared remarks. We'd be happy to answer any questions you may have.

CHAIRMAN RANDALL: Thank you.

1 Commissioners, questions. Commissioner Ervin.

2 **COMMISSIONER ERVIN:** Thank you, Mr. Chairman.

3 Gentlemen, good morning.

4 **MR. JAMEY GOLDIN:** Good morning, Commissioner.

5 **COMMISSIONER ERVIN:** You have obviously been
6 dealing with this for a while, and so I'm –
7 hypothetically speaking, in a power purchase
8 agreement, what is the typical duration in the
9 states that have been using these documents? Is
10 there kind of a standard or a –

11 **MR. JAMEY GOLDIN:** So, previously in South
12 Carolina, Duke Energy would only offer a five-year
13 PPA. Nothing's getting done.

14 I think we've seen Dominion has gone with 20
15 years –

16 **MR. MARK WESSON:** Uh-huh.

17 **MR. JAMEY GOLDIN:** – but the avoided cost is
18 so low, it's hard to get anything done.

19 Some of the co-ops that I'm familiar with are
20 putting out 30-year PPA terms.

21 Around the country, we did kind of a survey.
22 And the Legislature was unique here. I think in
23 this Act they set 10 years as the floor, bare
24 minimum, in there. And that's in H. 3659. But
25 then they have put in there, you know, that longer

1 terms can be granted that we propose as
2 intervenors. I know in Montana, for example, they
3 have 25 years on the books. They recently enacted
4 a law at the commission that put it at 15, and
5 their court struck that down and said that's not
6 commercially reasonable, and it violates PURPA.
7 Again, PURPA, the implementation at the state level
8 requires a fixed price and a fixed term to make
9 these viable. And again, you know, North Carolina,
10 what were they before they – what was it?

11 **MR. MARK WESSON:** I believe it was 15.

12 **MR. JAMEY GOLDIN:** Fifteen in North Carolina.
13 It's kind of – I mean, that gives a flavor for it.
14 Not to hide anything, I do think Alabama might have
15 one shorter than five years. Nothing is getting
16 done. Nobody's sued yet that that is in violation
17 of PURPA, but I think that's certainly being talked
18 about. You just – I mean, you can't – so I guess
19 that's a way of saying that it's all over the board
20 as to where these term lengths fall, and the
21 Legislature wants you all to make that
22 determination, in my opinion.

23 **COMMISSIONER ERVIN:** Would that determination
24 be made on a case-by-case basis?

25 **MR. JAMEY GOLDIN:** My thought would be that

1 it – I believe the way the statute reads is for the
2 intervenors to propose the PPA terms, but it's
3 really hard – and I don't want to get into
4 anything, you know, that may be pending. But it's
5 really hard to say that anything other than the
6 rate is utility-specific. So, does that answer
7 your question?

8 **COMMISSIONER ERVIN:** Well, I think so. I'm
9 trying to think – you used, in your slide
10 presentation, the residential mortgage model as
11 kind of something to think about. And so I guess
12 the first question – we're all familiar with that
13 market – is there – and you can get mortgages,
14 obviously, for 10, 15, 25, 30 years. Do the
15 lenders typically – do they amortize the loan over
16 the life of the agreement? Is that essentially
17 what they're doing?

18 **MR. MARK WESSON:** Yes, that is essentially
19 what they're doing.

20 **COMMISSIONER ERVIN:** Do they require an
21 upfront down payment, as well?

22 **MR. MARK WESSON:** It's more of a – I mean,
23 there's a couple of different metrics from the
24 underwriting. There's a loan-to-value and a debt-
25 service-coverage calculation –

1 **COMMISSIONER ERVIN:** Okay.

2 **MR. MARK WESSON:** – that sort of constrain the
3 amount that will be loaned. But those two are very
4 difficult to meet if, say, in the case of Duke, you
5 only have a five-year window to do it.

6 **COMMISSIONER ERVIN:** Right. So, obviously, I
7 mean, the concept being the longer the term, the
8 lower the payment.

9 **MR. MARK WESSON:** Yes, sir.

10 **COMMISSIONER ERVIN:** And that makes it more
11 commercially viable in certain circumstances.

12 **MR. MARK WESSON:** Correct, yes.

13 **MR. JAMEY GOLDIN:** And, Commissioner, to that
14 point, I do think the smaller projects are able to
15 avail themselves of a 10-year PPA –

16 **COMMISSIONER ERVIN:** Right.

17 **MR. JAMEY GOLDIN:** – and get something done.

18 **COMMISSIONER ERVIN:** Right.

19 **MR. JAMEY GOLDIN:** For the 75-megawatt type
20 projects that Mark referenced –

21 **COMMISSIONER ERVIN:** Right.

22 **MR. JAMEY GOLDIN:** – that's, you know, in
23 excess of \$80 million –

24 **COMMISSIONER ERVIN:** Right.

25 **MR. JAMEY GOLDIN:** – in –

1 **COMMISSIONER ERVIN:** It would be analogous to,
2 you know, are you going to buy a 1500-square-foot
3 home or are you going to buy, you know, a
4 multimillion dollar mansion. You're going to have
5 different considerations. That's why I asked
6 earlier, if a project is large substantially, in
7 scope, a larger project, are you saying that would
8 justify a longer term, perhaps?

9 **MR. JAMEY GOLDIN:** Yes, to that point, and now
10 I have clarity on that, yes, I do think that that
11 would certainly warrant – be a consideration for a
12 longer term. That's a benefit of a longer term.
13 So, you know, you may have in excess of 20
14 megawatts – whatever that is that you come up, just
15 throwing out a hypothetical – that would be a
16 reason for a longer-term PPA.

17 **COMMISSIONER ERVIN:** Are you aware in other
18 states have they tied the term lengths to number of
19 megawatts being produced? Is that typically done,
20 or not?

21 **MR. MARK WESSON:** Don't believe I've seen
22 that, no, sir.

23 **COMMISSIONER ERVIN:** Okay. So, have they
24 tied – have any states tied it to the total cost of
25 the project? Have they attempted to do it in that

1 fashion?

2 MR. MARK WESSON: I have not seen that,
3 either.

4 MR. JAMEY GOLDIN: And I think when we say
5 that, we haven't seen it in statute or commission
6 orders around the PUCs around the country.

7 COMMISSIONER ERVIN: So as you read Section
8 58-41-20(I), is it your interpretation of the new
9 law that the independent third-party expert that
10 the Commission hires has the authority to ask the
11 company, the utility, for specific requests as
12 relates to their proposal? In other words, they
13 have that kind of a fact-finding role, is that your
14 understanding?

15 MR. JAMEY GOLDIN: I think it's explicit in
16 there that, with leave of the Commission or
17 permission of the –

18 COMMISSIONER ERVIN: Right.

19 MR. JAMEY GOLDIN: – Commission, that they are
20 entitled to any documents, subject to
21 confidentiality, of the utility, to formulate their
22 opinion on any of the issues with which they are
23 charged.

24 COMMISSIONER ERVIN: And if – so it seems to
25 me, just, when you read the statute, it's fairly

1 clear then – it's very clear that the third-party
2 expert that we employ to help us with technical
3 issues in an application of the new Act has not
4 only the authority but the responsibility to ask
5 questions of the utility, if needed.

6 **MR. JAMEY GOLDIN:** It is.

7 **MR. MARK WESSON:** I believe they're required
8 to independently derive their own conclusions.

9 **COMMISSIONER ERVIN:** Their own conclusions.
10 So, I don't see it in the – I didn't hear it in the
11 statute, and I haven't – I don't think I've – I've
12 read it a couple of times. I don't recall. But is
13 it clear to you that the Commission has the
14 ultimate say, though? I mean, this is a report
15 that comes to us, a recommendation.

16 **MR. JAMEY GOLDIN:** I don't think due process
17 would allow the delegation otherwise. I think –

18 **COMMISSIONER ERVIN:** Right.

19 **MR. JAMEY GOLDIN:** It's my opinion, and in the
20 drafting of it, that it is their role to advise
21 you, to be able to advise you on methodology. One,
22 you know –

23 **COMMISSIONER ERVIN:** Right.

24 **MR. JAMEY GOLDIN:** – multiple methodologies.
25 A rate, a rate for each utility. Their opinion of

1 that. But you're not ceding your authority.

2 **COMMISSIONER ERVIN:** We're not bound by it;
3 it's intended to assist the Commission –

4 **MR. JAMEY GOLDIN:** That's right.

5 **COMMISSIONER ERVIN:** – in coming up with a
6 just, a fair, and reasonable outcome.

7 **MR. JAMEY GOLDIN:** You know, Commissioner
8 Ervin, as a former public employee, you know, I
9 understand limited resources, and I think that was
10 the ultimate wisdom of the General Assembly is to
11 get somebody outside because we know the Commission
12 Staff is overworked. This is what that is. It's
13 an advisory role, and they have to issue a report
14 with their independent conclusions, but you
15 certainly are not bound by that.

16 **COMMISSIONER ERVIN:** Right. It's intended to
17 be another tool in the toolbox, so to speak, for
18 the Commission to utilize, to come up with a best
19 result, or a good outcome.

20 **MR. MARK WESSON:** I believe the actual
21 language is: Any conclusions based on the evidence
22 in the record and included in the report are
23 intended to be used by the Commission, along with
24 all other evidence submitted during the proceeding,
25 to inform its ultimate decision in setting the

1 avoided costs for each electrical utility.

2 **COMMISSIONER ERVIN:** Right. And so, along
3 those lines – and you all will live with this Act,
4 I guess, and the process of its passage. There's a
5 lot of debate, subcommittee hearings, committee
6 hearings, that kind of thing. Based on your
7 understanding of the legislative history, do you
8 think the Act contemplates that that third-party
9 independent expert would testify at the hearing and
10 be subject to cross-examination? Or just submit a
11 report?

12 **MR. JAMEY GOLDIN:** In our discussions, in
13 public discussions, I do not recall whether actual
14 testimony, and subject to cross, was there. I
15 think the thought – my opinion is the thought was
16 that was a technical advisor to give you a report.
17 They have to produce a report, the report is
18 considered with the rest of the evidence. I don't
19 recall that ever being – you know, their duty, the
20 duty that is in here, and it says it explicitly, is
21 to you, the Commission, not –

22 **COMMISSIONER ERVIN:** Right.

23 **MR. JAMEY GOLDIN:** – as an expert. And so I
24 don't – you know, I don't see it the same way I do
25 the experts that we all will retain. And I think

1 in the drafting that was probably the way that the
2 Legislature intended.

3 **COMMISSIONER ERVIN:** Thank you. Those are my
4 questions.

5 **MR. JAMEY GOLDIN:** Thank you, Commissioner
6 Ervin.

7 **CHAIRMAN RANDALL:** Thank you.
8 Commissioner Williams.

9 **VICE CHAIRMAN WILLIAMS:** Thank you, Mr.
10 Chairman.

11 Mr. Goldin, Mr. Wesson, thank you for being
12 here today. I've thoroughly enjoyed your
13 presentation and appreciate your time.

14 A couple of questions. I want to go back to
15 Section 58-41-20(I). Commissioner Ervin was just
16 referencing that section. I want to talk about
17 avoided costs. Do you think – and this is for both
18 of you. Do you think that the calculation of
19 avoided costs is an inherently adversarial process?

20 **MR. JAMEY GOLDIN:** As to the cost, not the
21 methodology?

22 **VICE CHAIRMAN WILLIAMS:** Both.

23 **MR. JAMEY GOLDIN:** In a vacuum, avoided cost
24 is just what it should be: what is not incurred in
25 the next purchase. And I don't think it – I don't

1 think it should be. I really – I don't. But
2 experience shows that it typically is.

3 **VICE CHAIRMAN WILLIAMS:** And that's where I
4 get a little confused. I hate to jump around, but
5 if you go to Section 58-41-20(F), you reference,
6 Mr. Goldin, that this is the most powerful portion
7 of the bill. Using the former governor's famous
8 phrase, it's a new day in South Carolina; the State
9 is seeking to promote the State's policy of
10 encouraging renewable energy. It seems as if, to
11 me, that, despite what method you use, the
12 calculation of avoided costs should essentially
13 speak for itself. There shouldn't be any
14 gamesmanship employed. It should really just be a
15 mathematical equation that may change based on the
16 utility.

17 So I'm just concerned that – I'm hoping
18 there's something that we're not missing, because
19 it seems to me, in my experience – and maybe you
20 have the same experience – that parties can get a
21 bit defensive when discussing avoided costs and the
22 methodology of reaching that number.

23 **MR. JAMEY GOLDIN:** Commissioner Williams, we
24 like to say numbers don't lie, but I don't think
25 that's always the truth. And so I think that's

1 where there is some defense, is on transparency, on
2 are you getting the proper information. To that
3 section you referenced, though, that's talking
4 about the term of length of the – the tenor of the
5 contract, not the rate. So I just want to clarify
6 that that – but it's not – so that section is
7 specific to it, but the language is not. It is now
8 the policy of this State to promote – or, encourage
9 renewable energy. We've never had that codified
10 before.

11 **VICE CHAIRMAN WILLIAMS:** And if the avoided –
12 not to interrupt you, but if the avoided cost is
13 too low, that does not encourage renewable energy,
14 does it?

15 **MR. JAMEY GOLDIN:** No. It stifles.

16 **VICE CHAIRMAN WILLIAMS:** So it seems to me
17 that we have to figure out a way to bring
18 transparency to calculating avoided costs. It
19 shouldn't be too hard for anyone, arguably, to
20 understand how those costs are calculated.

21 **MR. JAMEY GOLDIN:** So I think in this Act it
22 explicitly says that the methodologies and formulas
23 and all information shall be transparent in that
24 process. You get your methodology and then you
25 calculate the number. And that's how we argue over

1 it. I mean, that's what is in 3659, in my opinion.

2 **VICE CHAIRMAN WILLIAMS:** Do you think that
3 there should be more than one method used, or
4 should there be some standardization?

5 **MR. JAMEY GOLDIN:** You know, on that, it's
6 hard – it's hard to know, because we've never been
7 given that option before. We certainly are going
8 to bring people before you, experts, that do have
9 experience on that, that will give their opinion of
10 it, and that will be far down the road.

11 Personally, it's kind of hard to defend multiple
12 methodologies for one state. And I don't know if
13 that's good or bad for my clients, but I do think
14 that a State approach is something that this Act
15 allows you to consider. I know it allows you to
16 consider that.

17 **VICE CHAIRMAN WILLIAMS:** Thank you, gentlemen.
18 Mr. Wesson, if you have any comments, you're
19 welcome to give them. I didn't mean to limit my
20 discussion with Mr. Goldin.

21 **MR. MARK WESSON:** Thank you.

22 **VICE CHAIRMAN WILLIAMS:** If not, I'm finished.
23 Thank you, Mr. Chairman.

24 **CHAIRMAN RANDALL:** Thank you.

25 Commissioner Howard.

1 **COMMISSIONER HOWARD:** A couple of quick
2 questions. Is there any relationship between the
3 length of the terms and depreciation of assets?

4 **MR. MARK WESSON:** There is no correlation
5 between the two. The assets, as I mentioned, will
6 produce energy beyond 40 years.

7 **COMMISSIONER HOWARD:** So your – when you
8 depreciate, say the solar panels, you're using a
9 40-year depreciation? Or what years?

10 **MR. MARK WESSON:** No, I was talking about the
11 life of – the useful life. If you were to
12 depreciate the panels, you would look at the useful
13 life, from a GAAP perspective.

14 **COMMISSIONER HOWARD:** How long would be the
15 useful life you would say?

16 **MR. MARK WESSON:** Probably 40 years, something
17 like that.

18 **COMMISSIONER HOWARD:** One concern I have is
19 because the electric industry is moving so fast and
20 so rapid with technology, is it any concern –
21 should we have any concern when we talk about
22 depreciation, as to the current solar panels being
23 obsolete in so many years? Five years? The
24 technology, say the technology makes these panels
25 obsolete, and would that play into the terms?

1 **MR. MARK WESSON:** Well, the panels themselves,
2 while at any point in time there may be a more
3 efficient panel that could go on the next solar
4 array, the ones that are in place are generating
5 energy. So as far as technological obsolescence,
6 it would be the next solar farm that's built would
7 be more efficient and most probably just take up
8 less acreage.

9 **COMMISSIONER HOWARD:** Okay. Thank you, very
10 much.

11 **MR. JAMEY GOLDIN:** And, Commissioner, if I
12 might follow up – Mark is the finance guy; I'm just
13 a lawyer.

14 **COMMISSIONER HOWARD:** And which position
15 should I listen to?

16 **MR. JAMEY GOLDIN:** That one.

17 [Laughter]

18 So I'll be brief. No, but this Act does allow
19 for a reset every 24 months. That's, I think, to
20 your point, if technology evolves, if avoided
21 costs, you know, go up, go down, every two years we
22 come back before you and have this discussion again
23 in a proceeding.

24 **COMMISSIONER HOWARD:** Okay, that's
25 understandable. Thank you.

1 **CHAIRMAN RANDALL:** Thank you.

2 Commissioner Whitfield.

3 **COMMISSIONER WHITFIELD:** Thank you, Mr.

4 Chairman.

5 Actually, Commissioner Howard went where I was
6 going, but I want to – before I get back to that, I
7 want to follow up with each of you where
8 Commissioner Ervin was questioning you about, I
9 think, about the independent consultant that this
10 Act allows the Commission to employ. And just to
11 follow up right at the end where he was, in your
12 opinion, I think the way – Mr. Goldin –
13 particularly the way you answered the question, in
14 your opinion, in that role, this consultant or
15 expert firm, if you will, or group, since they're
16 not under – as you said, probably didn't envision
17 them being under oath and subject to cross up here
18 on the stand, they would essentially function, in
19 your opinion, just like any other technical
20 advisory staff person we have, engineers,
21 accountants, or economists, that we have here on
22 staff, or that we might have here on staff at the
23 Commission, and it would just be an advisory role
24 for us. And again, that final – as Commissioner
25 Ervin said – that final how-we-use-that or that

1 final decision would rest with us. In other words,
2 that group or that firm should be treated just like
3 we do another staff member here the Commission; is
4 that right?

5 **MR. JAMEY GOLDIN:** So I think you're spot-on.
6 I think it's our belief that, no different than
7 Joseph or any of the other fine Commission Staff
8 out here, that that's the role that they would
9 play. Look, I've been involved with the PSC for a
10 long time, and I understand, you know, the
11 limitations, again, of staffers and, you know,
12 personnel shortages, and that kind of thing. And
13 so by allowing for this, they are advising you,
14 they are issuing their report. You give deference
15 to it, as you see fit, along with everything else
16 that is in the record. But it's no different than
17 Mr. Melchers wouldn't be subject to cross, or
18 direct. That's my opinion of how this – and I
19 think the Legislature would have specified that
20 they're under oath and that they are subject to
21 cross-examination, had they wanted to.

22 **COMMISSIONER WHITFIELD:** Well, thank you for
23 that clarification and for your exchange with
24 Commissioner Ervin about that. Back to where
25 Commissioner Howard was going – and not to go down

1 the depreciation path a little bit, but – and I
2 know he said you were more the finance person, I
3 think, Mr. Wesson. But if you could get technical
4 with me just a minute, since we certainly haven't
5 seen this play out over 40 years, I know you
6 reference these larger tracts of land that Johnson
7 Development owns, and how many acres it would take
8 for 75 megawatts – I think you said around 600
9 acres.

10 **MR. MARK WESSON:** Yes, sir.

11 **COMMISSIONER WHITFIELD:** What, after 40 years,
12 can be done with that project? We look at nuclear
13 generation that gets relicensed for another 20
14 years. We look at hydroelectric generation assets
15 that get relicensed periodically by FERC. Other
16 things go on with hydro facilities as well. Some
17 don't keep them in the portfolio, some do. All
18 these facilities – and, of course, we know what's
19 happened with many of the coal facilities in South
20 Carolina. But what would happen, from a technical
21 standpoint, with those facilities after they've
22 reached their useful life, and also does it matter
23 the size of these commercially – commercial-size
24 generation facilities?

25 **MR. MARK WESSON:** So at that point in time, at

1 the end of life, you still have an interconnection
2 to the grid. You could negotiate a new PPA and
3 re-panel, with new technology, the same site. If
4 you came to the conclusion, for some reason, that
5 that was not what you wanted to do – say,
6 technological obsolescence – at the end, our
7 intention is to plant trees, just like we're doing
8 now. We'd be able to just put it right back into
9 pine plantation.

10 **COMMISSIONER WHITFIELD:** Do we know that – is
11 technology, I guess, far enough along that you know
12 that that's the time that you would have to
13 re-panel? Do you think the panels you have now
14 could go longer or do you think they might go
15 shorter, less time? What is – I guess I'm getting
16 real technical with you on –

17 **MR. MARK WESSON:** There's a degradation in the
18 panels over time. They will produce a – each year
19 they produce a little bit less –

20 **COMMISSIONER WHITFIELD:** Less?

21 **MR. MARK WESSON:** – energy. So at that point
22 in time, you can look at it and say, "I have energy
23 being produced at not much more incremental cost
24 than my maintenance that you have every year, or I
25 can invest new dollars and use the same land and

1 infrastructure to put new panels that would create
2 more energy,” and it would just be a cost-benefit
3 calculation that you’ll do further on down the line
4 after your PPA is over, because you’ve got an
5 obligation to deliver that energy.

6 **COMMISSIONER WHITFIELD:** Is the degradation
7 accelerated on the larger 75-megawatt –

8 **MR. MARK WESSON:** No, sir.

9 **COMMISSIONER WHITFIELD:** There’s no
10 acceleration in that because of the –

11 **MR. MARK WESSON:** It’s just each panel. You
12 just have lots and lots of panels on 600 acres.

13 **COMMISSIONER WHITFIELD:** Well, thank you.
14 That’s all I have, Mr. Chairman,

15 **CHAIRMAN RANDALL:** Thank you. So long as
16 you’re not close to pine trees, right, to get that
17 sap.

18 Commissioner Hamilton.

19 **COMMISSIONER HAMILTON:** Thank you, Mr.
20 Chairman.

21 Gentlemen, I think most of my questions have
22 been answered, but I’d like to thank you for being
23 here today. It’s been very informative, and as we
24 start on this path we’re going to need to hear from
25 a lot of people. Thank you for being here.

1 **MR. MARK WESSON:** Thank you for having us.

2 **MR. JAMEY GOLDIN:** Thank you, Commissioner
3 Hamilton,

4 **CHAIRMAN RANDALL:** Thank you.

5 Commissioners, any other questions?

6 [No response]

7 Okay. We appreciate y'all being here. I
8 know, with 3659, you've followed us, I'm sure.
9 We've had a lot of people tuning into our
10 livestreaming. We've been keeping check on
11 numbers, and they've been pretty substantial
12 through all these deliberations. And we've started
13 off at a fast pace on trying to get ahead of this,
14 which I like, frankly, and I think we're finding
15 the nuances of the bill as we go along. And, of
16 course, Mr. Goldin, you've been involved with the
17 advisory group. So I think that's going to all be
18 a good thing for all of us. For us, it's going to
19 be an interesting time to use – be able to, through
20 this legislation, use the consultants. And I know
21 there's going to be a real formula to using
22 marginal costs and the PPA and everything, and the
23 methodology, how that gets worked out, as to how
24 this works best for everybody in this State. So,
25 we thank you for being here today. Appreciate your

1 presentation.

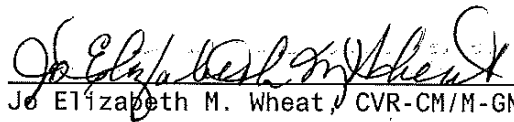
2 If there are no further questions, we're
3 adjourned.

4 [WHEREUPON, at 10:57 a.m., the
5 proceedings in the above-entitled matter
6 were adjourned.]

C E R T I F I C A T E

I, Jo Elizabeth M. Wheat, CVR-CM-GNSC, Notary Public in and for the State of South Carolina, do hereby certify that the foregoing is, to the best of my skill and ability, a true and correct transcript of all the proceedings had regarding a requested allowable ex parte briefing in the above-captioned matter before the PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA;

IN WITNESS WHEREOF, I have hereunto set my hand and seal, on this the 28th day of June, 2019.


Jo Elizabeth M. Wheat, CVR-CM/M-GNSC
Hearings Reporter, PSC/SC
My Commission Expires: January 27, 2021.